

FA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

08 MAY -5 AM 11:49

'08 MJ 14 1 1

UNITED STATES OF AMERICA,

Plaintiff,

v.

Jose PINA-Flores,

Defendant(s)

Magistrate Case No.

COMPLAINT FOR VIOLATION OF:

Title 8 U.S.C., Sec. 1324 (a)(1)(A)(ii)
Transportation of Illegal
Aliens

The undersigned complainant, being duly sworn, states:

On or about **May 3, 2008**, within the Southern District of California, defendant **Jose PINA-Flores** with the intent to violate the immigration laws of the United States, knowing and in reckless disregard of the fact that aliens, namely, **Victor Manuel OLIVERA-Olivera**, **Laureana Beatriz PEREZ-Zurita**, and **Raul GALINDO-Ventura** had come to, entered and remained in the United States in violation of law, did transport and move, said aliens within the United States in furtherance of such violation of law; in violation of Title 8, United States Code, Section 1324(a)(1)(A)(ii).

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.

Ismael A. Canto

SIGNATURE OF COMPLAINANT

Ismael A. Canto

Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 5th DAY OF May 2008

Louisa S. Porter

UNITED STATES MAGISTRATE JUDGE

FAS

PROBABLE CAUSE STATEMENT

Furthermore, the complainant states that **Victor Manuel OLIVERA-Olivera, Laureana Beatriz PEREZ-Zurita, and Raul GALINDO-Ventura** are citizens of a country other than the United States; that said aliens have admitted that they are deportable; that their testimony is material, that it is impracticable to secure their attendance at the trial by subpoena; and they are material witnesses in relation to this criminal charge and should be held or admitted to bail pursuant to Title 18, United States Code, Section 3144.

On May 3, 2008, Border Patrol Agent T. Watson along with his assigned Service Canine (K-9) was performing assigned duties near Tecate, California. At approximately 8:20 p.m., Agent Watson was traveling westbound on Highway 94 near Emery Road. As Agent Watson passed Emery Road, he noticed a white tractor trailer which exited Emery Road onto Highway 94 and began to travel eastbound. Agent Watson thought that it was suspicious that a tractor trailer would be operating in the area, since today was a Saturday and not a normal weekday work day. Most of the tractor trailers which operate in the Tecate area do not use Emery Road to access Highway 94 as there is a dangerous turn where the two roads meet. There have been several events in the past two years where Border Patrols Agents have encountered tractor trailers being used to smuggle undocumented aliens in the Tecate area.

Immediately after seeing the tractor trailer, Agent Watson went to the location on Emery Road. At this location Agent Watson discovered fresh footprints of a large group of people in the brush on the side of Emery Road. The footprints led to Emery Road, where there was a large area of disturbed dirt which covered the width of the road where it appeared that someone had attempted to conceal the footprints. There were no tire tracks over the area of disturbed dirt which indicated to Agent Watson that the tracks on the road were covered after the tractor trailer drove through the area approximately two minutes earlier. Agent Watson did not see any other vehicles traveling north on Emery Road after he initially observed the tractor trailer.

Using his service radio, Agent Watson gave a description of the tractor trailer along with its direction of travel on Highway 94 to Border Patrol Agents M. Quandt and S. Waite, who were positioned on Highway 94. Agent Watson also advised Agents Quandt and Waite of his suspicions that the tractor trailer had picked up undocumented aliens on Emery Road. Agents Quandt and Waite observed a white tractor trailer traveling east on Highway 94 at Forrest Gate Road. Agent A. Henderson was positioned west of Agents Quandt and Waite on Highway 94 and stated that he had not observed any other tractor trailer traveling east on Highway 94 between Emery Road and Forrest Gate Road. Agents Quandt and Waite followed the tractor trailer from Forrest Gate Road to Interstate 8 (I-8). The tractor trailer entered onto I-8 and traveled east. Agents Quandt and Waite initiated a vehicle stop of the tractor trailer utilizing the overhead lights and siren on their marked Service vehicles. The vehicle yielded on Interstate 8 approximately one mile east of Kitchen Creek Road.

Agent Waite approached the tractor trailer and identified himself as a U.S. Border Patrol Agent to the driver later identified as the defendant **Jose PINA-Flores**. Agent Waite questioned the defendant as to his citizenship. The defendant presented Agent Waite with a Mexican Passport. Agent Waite noticed that there was no visa present with the passport and questioned the defendant as to his immigration status. The defendant freely admitted that he didn't have a visa and that he had entered the United States illegally by jumping over the border fence near Tecate, California on May 2, 2008. At approximately 8:50 p.m., the defendant was placed under arrest. Agent Watson arrived at the location of the tractor trailer approximately five minutes after it was stopped. Utilizing his K-9, Agent Watson conducted a canine sniff of the trailer. The K-9 is certified in the detection of concealed humans and the odors of several controlled substances. During the canine sniff, the K-9 exhibited a change of body posture and increased respiration which Agent Watson recognized as an alert to the presence of concealed humans or the odors of narcotics at the rear of the tractor trailer.

CONTINUATION OF COMPLAINT:**Jose PINA-Flores**

FAS

The rear doors of the trailer were secured with a locking seal. Border Patrol Agent S. Gilson cut the lock with bolt cutters in order to gain access to the trailer. Upon entering the trailer, Agent Watson observed large bundles of scrap cardboard piled to within three feet of the ceiling. Agent Watson crawled over the top of the bundles and encountered a large group of people in a small space in the front of the trailer. The people were tightly packed into this space. There was no source of ventilation or air conditioning in the trailer. Agent Watson identified himself as a U.S. Border Patrol Agent to the group of people who immediately began to ask for water. After removing the group of people, who totaled 61 in number, from the trailer, Agent Watson questioned each of them as to their immigration status. Each of them admitted to being citizens and nationals of Mexico illegally present in the United States. The 61 subjects were arrested and transported along with the defendant to the Tecate Processing Center in Tecate, California.

STATEMENT OF DEFENDANT: Jose PINA-Flores

The defendant was read the Miranda rights in the Spanish language and was willing to answer questions without an attorney present. The defendant stated that he is a citizen and national of Mexico illegally present in the United States. The defendant stated that he had entered the United States at night of May 2, 2008, by crawling beneath the primary border fence just west of the port of entry in Tecate, California. The defendant stated that he entered the United States with the expressed intent of continuing to work as a tractor trailer driver for an alien smuggling organization that operates in the area of Tecate, California.

The defendant stated that a family friend introduced him to a man named Arturo in or around July of 2007. The defendant stated that he agreed to work as a driver, and that he picked up and transported his first load on or around February 15, 2008. The defendant added that he had successfully picked up and delivered approximately seven loads since then. The defendant stated that Arturo would demand that the defendant give him his personal cellular telephone in exchange for a two-way radio. The defendant drove the tractor trailer from Otay Mesa, California to Tecate, California while Arturo followed him in one of several vehicles. The defendant stated that, as on this occasion, he would drive north on California State Route (SR) 125 to SR-94. He would proceed eastbound on SR-94 to SR-188, and travel southbound toward the Tecate, California Port of Entry. The defendant stated that he parked in or near the R.L. Jones truck lot on the west side of SR-188 and awaited a signal from Arturo to pick up his load. Upon receiving the signal, described by the defendant as a wave from Arturo in a passing vehicle, the defendant proceeded northbound on SR-188 to Humphries Road, eastbound on Humphries Road to Emery Road, and northbound on Emery Road. The defendant stated that he picked up his loads on Emery Road just north of the intersection with Airport Road. He explained that he parked the truck and the aliens entered the trailer by way of a trap door in its underside. The defendant stated that once the aliens were inside the trailer, he proceeded northbound on Emery Road to SR-94. The defendant described his customary route of travel as eastbound SR-94 to Buckman Springs Road, northbound to Interstate Highway 8, westbound I-8 through the Pine Valley checkpoint, and returning to the truck lot in Otay Mesa.

The defendant stated that each time he successfully delivered a loaded trailer to Otay Mesa, Arturo would pick him up and return him to his home, at which point he returned the defendant's personal cellular telephone in exchange for the two-way radio. The defendant stated that Arturo had agreed to pay him \$250.00 for each alien in the load. The defendant stood to gain \$15,250.00 for his participation in the smuggling event. When asked why he had deviated from his established route of travel by turning eastbound on I-8 from Buckman Springs Road, the defendant stated that Arturo had instructed him to do so in the event that he was followed by any Border Patrol Agents.

MATERIAL WITNESSES STATEMENTS:

FAB

Material witnesses **Vict or Manuel OLIVERA-Olivera, Laureana Beatriz PEREZ-Zurita, and Raul GALINDO-Ventura** admitted in summary that they are citizens and nationals of Mexico illegally present in the United States. Each stated that they made arrangements in Tijuana, Baja California Mexico to be smuggled to various parts of the United States for a fee ranging from \$1,000.00 to \$3,500.00 (US). The material witnesses stated that they entered the United States illegally with the aid of an alien smuggler/foot guide near Tecate, California. They stated that the group walked for approximately three hours until they reached a designated location where a tractor trailer soon arrived and picked them up. A short time later, they were stopped and consequently arrested by the Border Patrol.

The material witnesses were presented with a photographic line up depicting six individuals. In the photographic line up, none of the material witnesses were able to positively identify defendant **Jose PINA-Flores** as the driver.